

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 14, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

STATEWIDE

Request to Approve Revised Application and Qualification
Questionnaire for Agricultural, Pasture, Business, Commercial,
Industrial and Resort Leases

BACKGROUND:

Land Division generates revenues from leases issued through the public auction process. There are exceptions, but in most instances to lease State lands, Land Division would have to conduct a public auction. Public auctions are normally held annually by the respective District Offices.

In the past, no screening of prospective bidders was done. Anyone knowing of a public auction could attend and bid. Starting in 1996, Land Division obtained Board approvals for a Public Auction Bid Packet and the Application and Qualification Questionnaire.

At its September 27, 1996 meeting (D-12), the Board authorized Land Division to implement an Application and Qualification Questionnaire process for the purpose of screening and evaluating the qualifications of prospective bidders for State agricultural, pasture, business, commercial, industrial and hotel, resort leases sold at public auction. In addition, delegated to the Chairperson the authority to revise, change and amend the Application and Qualification Questionnaire processes as he sees fit to best serve the interests of the State. The application and qualification questionnaire would require potential bidders to submit a business plan, financial capability information, etc. The Division could then effectively evaluate prospective bidders. This would eliminate lease terminations because the successful bidder had no idea of how to utilize the State property or lacked the financial capability to run the business.

At its May 9, 1997 meeting (D-43), the Board amended staffs' request to close a loophole in the Application and Qualification Questionnaire. The amendment would allow the Board the option to disqualify any applicant who was convicted of any crime from bidding on a lease in cases where said crime directly relates to the applicant's ability to adequately and appropriately use the State lands for the purpose(s) intended and impacts the assessment of such

ability. In 1996, a Maui public auction resulted in the successful bidder winning a State agricultural lease. The successful bidder was found guilty of allowing 22 cattle die of starvation or dehydration in 1993. She was appealing the conviction.

At its May 15, 1998 meeting (D-25), the Board approved staff's Public Auction Bid Packet for State Agricultural and Pasture Leases and delegated to the Chairperson the authority to revise the bid packet and qualification process. In January 1998 when the Hawaii District office was requesting approval to public auction several agricultural leases, the Board was concerned about how the Department could assist economically impacted regions such as Hamakua while still ensuring that legitimate farmers and ranchers would have an opportunity to acquire State leases. Concerns were raised that if the standards are relaxed too much, people with little or no interest in farming may speculate on the land and deprive legitimate farmers and ranchers from putting the lands to economic use. Displaced sugar workers could qualify under Section 171-14.5(8), Hawaii Revised Statutes for a State agricultural lease.

The application questionnaire helps the Division obtain those truly qualified farmers and ranchers with a sound business plan and the ability to carry it out.

At its August 28, 1998 meeting (D-16), the Board approved and amended staff's recommendation to (1) approve the Public Auction Bid Packet for State land leases for the purpose of screening and evaluating the qualifications of prospective bidders for State leases sold at public auctions statewide and (2) delegated to the Chairperson the authority to revise the Bid Packet and qualification process as he sees fit to best serve the interests of the State. The Board amended its approval by making some specific language and content changes to Exhibit C, and added a condition C to read:

- C. The results of the first use of the evaluation criteria for Business, Commercial, Industrial and Resort Applications be reported to the Board for information purposes.

The Public Auction Bid Packet and the Application and Qualification Questionnaire covered agricultural, pasture, business, commercial, industrial or resort leases. In researching how to qualify bidders and the development of an appropriate application form, staff was faced with a wide range of applicants interested in leasing State lands. For example: major corporations with billion-dollar assets and a small, one-man operation with barely \$50,000 start-up costs. Due to the heavy financial analysis and knowledge required, staff looked at "piggy back" on what other agencies already do. This would reduce the workload for both staff and the Applicant. The process would meet the objective of our application and qualification process which is to ensure that the bidders for State land know what they are doing (have a plan for their business, understand the economics involved, etc.) and show the ability to fulfill the lease terms and conditions. Two areas were considered: publicly traded corporations and loans. Corporations registered

and regulated by the U.S. Securities and Exchange Commission (SEC) undergo intense SEC and public scrutiny. Lending institutions have a similar object to our application process in ensuring that an applicant has a viable plan and the ability to pay back the loan. Therefore, 'automatic' qualification would be for: a/an Applicant that is registered with the U.S. Securities and Exchange Commission (SEC) or a/an Applicant that has received a loan from an institution which is a member of the Federal Deposit Insurance Corporation (FDIC) or from any federal mortgage lending agency qualified to do business in Hawaii. Applicants that were automatically qualified would not have to provide a business plan or evidence of financial capacity or criminal convictions.

Due to a public auction for two (2) Oahu State leases, staff determined there was a need to revisit the Application and Qualification Questionnaire. At its April 13, 2007 meeting (D-1), the Board granted staffs' request to withdraw its submittal covering amendments to the Application and Qualification Questionnaire for agriculture, pasture, business, commercial, industrial and resort leases. More time was needed to investigate the inclusion of credit reports.

PROBLEMS AND DISCUSSION:

- A. In 2006, Land Division advertised a public auction for 2 State industrial leases in Waikele. The term was for 65 years. One lease upset minimum annual lease rent was \$182,560 and the second lease upset minimum annual lease rent was \$146,020. The successful bidder would be required within 3 years from the commencement date to complete construction of improvements having a value of not less than \$3,000,000.

The Division received an application for both leases. Staff had to automatically qualify the prospective bidder because they had answered Question No. 10 and provided evidence of a \$131,000 loan. Prospective bidder was not required to provide any information in Part II. Qualifications and Experience, Part III. Business Plan, Part IV. Financial Capacity, and Part V. Criminal Convictions sections of the Application and Qualification Questionnaire. Later staff was able to ascertain the \$131,000 loan was a refinance of an equipment loan. This raised serious questions by staff if the prospective bidder had the financial resources to pay the rent (of \$182,560 or \$146,020) or complete the \$3,000,000 improvement requirement in 3 years. Additionally, if this prospective bidder could produce an equipment loan, our process could open the door for someone to produce a \$5,000 loan. On the day of the public auction, the qualified prospective bidder was disqualified because they had not provided a current County tax clearance.

Staff reviewed the 1998 approval. The intent was not to try to duplicate the financial review process that already was conducted by SEC or FDIC-insured institutions.

However, staff and/or the volunteer screening committee need to know if the prospective bidder has the qualifications and experience to conduct a business on the State property. In the above-mentioned situation, staff knew the prospective bidder was a tenant for another State agency and was in business since 1986, but had no information concerning the size of the operation such as annual sales, gross and net revenues, number of employees, etc. This type of information would reveal whether or not the prospective bidder is able to pay the upset rent of either \$182,560 or \$146,020.

Furthermore, a business plan helps determine what the prospective bidder is proposing to do on the State property. Again, in the above-mentioned situation, there was no information on what was planned for the property such as location and size of buildings or warehouses, parking areas, the improvement costs, the development schedule, how will the improvements be financed, subleasing, 5 year cash flow projections, etc.. This type of information would reveal whether or not the prospective bidder would be able to complete the \$3,000,000 improvements in 3 years. This section is very important because it determines if the prospective bidder is able to develop (improve) the property and has read the lease requirements.

Agriculture or pasture leases require the prospective bidder to qualify as a bona fide farmer/rancher pursuant Section 171-14.5, Hawaii Revised Statutes. If the prospective bidder qualifies and provides evidence of a business loan, the prospective bidder does not have to complete the Business Plan, Financial Capacity or Criminal Convictions section of the Application. Again, staff and/or the volunteer screening committee would like to know what improvements will be made, at what cost, how will it be financed, 5 year cash flow projections, and a map showing the fencing, crop rows, internal roadways, structures, etc.. Again, this section is very important because it determines if the prospective bidder understands how to run an agriculture business and has read the lease requirements.

- B. Historically, the Division has no way of knowing if the prospective bidder has good credit. Staff and/or the volunteer screening committee do not know if the prospective bidder is chronically late in paying its bills. It is usually later on, after the lease is executed and possession has been given to the successful bidder, that problems arise. Usually it starts when rent is delinquent or a check bounces.

Staff contacted 2 Credit Reporting Companies. Fees range from \$11.00 to \$23.00 per inquiry, depending if it's a business or a consumer. For a consumer, we would be required to obtain a release from the individual. A credit report can be generated within 1 day to several days.

Common practice by property managers is to absorb the fees. The Division could absorb the expense or the Division could pass the fee onto the prospective bidder(s). To do so would require amending our

Administrative Rules covering fees. That process would be lengthy (say at least 2 years). Staff polled other State agencies (DOT, DAGS, DOA, DHHL, HHFDC) if they were pulling credit reports on prospective tenants. The response was: No. Does the Division want to undertake this additional responsibility? Response: No. How often do we have problems with 'questionable' prospective bidders? Response: Rarely. The Division has been aggressively monitoring compliance (rent, insurance, bond) of its tenants. Violations are taken to the Board for resolution or voluntarily cured by the tenant. Placing some of the responsibility on the prospective bidder(s) may appear questionable. Yet, this was done for the Waikiki Beach concession public auction. Staff and/or the volunteer screening committee can consider the information in its evaluation. Not submitting the requested information will be grounds for disqualification.

- C. There may arise situations in which the prospective bidder(s) intends, if it is the successful bidder at the auction, to form a new company to be the lessee. For example: the owner of a car dealership may want to put the lease in the name of the shell corporation that operates the car dealership. This is a business decision, usually to avert liability risks associated with the type of business. Suitable statements should be placed in the application form.

PROPOSED CHANGES:

- A. Staff is requesting the Land Board to eliminate from the Application and Qualification Questionnaire (for agricultural, pasture, business, commercial, industrial or resort), Part I: General Information, question

10. Has the Applicant received a business loan within the last two years from an institution which is a member of the Federal Deposit Insurance Corporation (FDIC) or from any federal mortgage lending agency qualified to do business in Hawaii? If Yes, attach a copy of the loan agreement.

And re-locate this question to Part IV: Financial Capacity and re-number this as "d." Staff modified "If yes, attach a copy of the loan agreement and any other documentation to evidence the loan and purpose of the loan proceeds. The Applicant must show what the loan proceeds were used for. Staff and/or the volunteer screening committee can consider it in its evaluation.

- B. Applicants' registered with the U.S. Securities and Exchange Commission will not be automatically qualified. They will have to complete the business plan. This provides staff and/or the volunteer screening committee a better picture of the Applicants' operations to be conducted on the State property.
- C. Staff is adding wording for the Applicant(s) to become responsible for submitting information on their credit worthiness. Part IV.

Financial Capacity, as follows:

"Attach Applicant's financial statements (balance sheet, income/expense statement, and reconciliation of net worth) for the past three (3) fiscal years, and the most current interim financial statement. If Applicant has not been in existence for three (3) years, also attach the financial statements of the principals, i.e., those holding at least a 10% ownership interest."

These are similar requirements if someone was applying for a loan.

In addition, we are adding a new requirement titled Credit History as follows:

"The Applicant shall have a satisfactory credit rating or credit history. Submit a Dun and Bradstreet "Comprehensive Report" for the Applicant.

If a Dun and Bradstreet "Comprehensive Report" is not available for the Applicant, this Credit History requirement shall be satisfied by submitting a credit report for each individual or entity with a 10% or more ownership interest in the applicant as follows:

- Individuals. Credit reports for individual owners shall be from a national credit reporting agency such as Equifax, Experian or TransUnion.

- Entities. Credit reports for entities with a 10% or more ownership interest in the applicant shall comply with the above-stated requirement regarding a Dun and Bradstreet "Comprehensive Report", provided, however, that if such a report is not available for any such entity, then credit reports for each individual with a 10% or more ownership interest in such entity shall be submitted in accordance with the above-stated requirements for individual credit reports.

All credit reports submitted to satisfy this Credit History Requirement shall be dated no earlier than thirty (30) days prior to the date of the Applicant's Application and Qualification Questionnaire. Failure to submit the required credit report(s) may result in disqualification to bid."

- D. Staff is adding wording to allow for the Applicant to have its entity or proposed entity complete the Application Form, as follows:

"The Applicant shall be the entity that will execute the Memorandum of Lease (if applicable) and the new lease (if Applicant is the successful bidder at the public auction).

If Applicant is the successful bidder at auction, but the entity that intends to execute the Memorandum of Lease and/or the new lease is different from the Applicant described in this Application (including changes to the ownership of Applicant), DLNR shall, at

its sole discretion, have the right to (1) deem these changes to Applicant as an assignment of the rights of Applicant to the new entity requiring the consent of the Board of Land and Natural Resources; or (2) nullify the results of the auction and cancel any rights of Applicant to obtain the lease as the successful bidder.

Alternatively, if Applicant intends to form a new entity to enter the Memorandum of Lease and/or new lease, Applicant may submit this Application and Qualification Questionnaire under the proposed entity by indicating "Yes" in Question 1 below and providing the name of the proposed entity AND submitting information regarding the proposed owners, partners, shareholders, directors, officers, LLC members, etc. DLNR will evaluate Applicant for eligibility to participate in the auction by applying the evaluation criteria to the proposed entity."

- E. Staff changed the Notarized Certification to read as follows:

"The undersigned Applicant hereby certifies that the statements and information contained in this Application and Questionnaire, including all attachments, are true and accurate to the best of Applicant's knowledge and understand that if any statements are shown to be false or misrepresented, Applicant may be disqualified from bidding or Applicant's lease may be cancelled. The undersigned Applicant also authorizes the State of Hawaii Department of Land and Natural Resources and any of its employees or representatives to conduct investigations regarding any of the information provided in this Applicant and contact any of the references named herein."

This will allow staff the opportunity to investigate the Applicant, disqualify the Applicant, and if necessary terminate the lease.

- E. Staff is modifying the Application to add 'limited liability company (LLC)' as a type of entity since this is now a common form of business ownership.
- F. Staff made minor re-numberings due to the inclusion of new requirements stated above.

CONCLUSION:

The Application and Qualification Questionnaire was last updated in 1998. The changes proposed will help improve Land Divisions' screening process. If more changes are needed. Staff will obtain Board approval.

This Application and Qualification Questionnaire will not be used for special revenue enhancement projects (example: Naniloa). For those projects, staff will obtain Board approval before proceeding.

The Public Auction Bid Packet was not covered in this submittal. Upon Board approval of the above-mentioned changes, staff will revise the Public Auction Bid Packet accordingly.

RECOMMENDATION: That the Board:

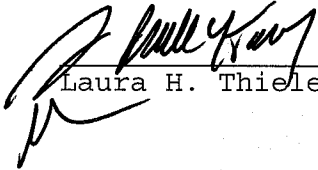
1. Approve the revised APPLICATION AND QUALIFICATION QUESTIONNAIRE hereby attached as Exhibit A and Exhibit B for the public auction of State leases for Agricultural, Pasture, Business, Commercial, Industrial or Resort purposes.
2. Authorize staff to revise the Public Auction Bid Packet accordingly.

Respectfully Submitted,



Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



Revised APPENDIX A
APPLICATION AND QUALIFICATION
QUESTIONNAIRE
(Agricultural or Pasture)

EXHIBIT "A"

APPENDIX A

APPLICATION AND QUALIFICATION QUESTIONNAIRE (Agricultural or Pasture)

Write answers in the spaces provided. Attach additional sheets as necessary, clearly indicating the applicable section number.

IMPORTANT NOTE: The Applicant shall be the entity that will execute the Memorandum of Lease (if applicable) and the new lease (if Applicant is the successful bidder at the public auction).

If Applicant is the successful bidder at auction, but the entity that intends to execute the Memorandum of Lease and/or the new lease is different from the Applicant described in this Application (including changes to the ownership of Applicant), DLNR shall, at its sole discretion, have the right to (1) deem these changes to Applicant as an assignment of the rights of Applicant to the new entity requiring the consent of the Board of Land and Natural Resources; or (2) nullify the results of the auction and cancel any rights of Applicant to obtain the lease as the successful bidder.

Alternatively, if Applicant intends to form a new entity to enter the Memorandum of Lease and/or new lease, Applicant may submit this Application and Qualification Questionnaire under the proposed entity by indicating "Yes" in Question 1 below and providing the name of the proposed entity AND submitting information regarding the proposed owners, partners, shareholders, directors, officers, LLC members, etc. DLNR will evaluate Applicant for eligibility to participate in the auction by applying the evaluation criteria to the proposed entity.

Part 1: General Information

1. Applicant's legal name: _____
Applicant's full mailing address: _____

2. Name of contact person: _____
Phone number: _____ Fax: _____
Email: _____
3. Applicant intends to bid on the following parcels:
Item: _____ Location: _____
Intended use: _____
Item: _____ Location: _____
Intended use: _____
Item: _____ Location: _____
Intended use: _____
4. Applicant intends to hold title to the lease as:
Type of owner (check one): ☐ Individual ☐ _____
Tenancy (check one, if applicable): ☐ Tenant in Severalty

() Husband and Wife
() Sole Proprietorship
() Joint Venture
() Partnership
() Corporation
() Limited Liability Company

() Joint Tenants
() Tenants in Common
() Tenants by Entirety

5. Applicant's Fiscal Year-End: _____

6. If Applicant is a partnership or joint venture, answer the following:

A. Name, address, & percentage share owned by each partner or joint venture member:

| <u>Name</u> | <u>Address</u> | <u>Share</u> |
|-------------|----------------|--------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

B. Date of Organization: _____

C. General or Limited Partnership (if applicable): _____

D. Recorded: _____

County

State

E. Currently registered in Hawaii: Yes/No If Yes, as of: _____

7. If Applicant is a corporation, answer the following:

A. When incorporated: _____

B. In what state or country: _____

C. Authorized to do business in Hawaii: Yes/No If Yes, as of: _____

D. Provide the name, address and shares of stock for each **officer** of the corporation:

President: Name _____

Address _____

Number of stock shares _____ Percentage of shares _____

Vice-President: Name _____

Address _____

Number of stock shares _____ Percentage of shares _____

Secretary: Name _____

Address _____

Number of stock shares _____ Percentage of shares _____

Treasurer: Name _____

Address _____

Number of stock shares _____ Percentage of shares _____

Other: Name: _____ Title: _____

Address _____

Number of stock shares _____ Percentage of shares _____

- E. Provide the name, address and shares of stock for each **member** of the corporation's **Board of Directors**:

Name _____

Address _____

Number of stock shares _____ Percentage of shares _____

Name _____

Address _____

Number of stock shares _____ Percentage of shares _____

Name _____

Address _____

Number of stock shares _____ Percentage of shares _____

- F. Provide the name, address and shares of stock for each **principal stockholder** which is not named in 6.D. and 6.E. above. (Principal stockholder means one holding 10% or more of the outstanding stock of the corporation.)

Name _____

Address _____

Number of stock shares _____ Percentage of shares _____

Name _____

Address _____

Number of stock shares _____ Percentage of shares _____

Name _____

Address _____

Number of stock shares _____ Percentage of shares _____

Name _____

Address _____

Number of stock shares _____ Percentage of shares _____

8. If Applicant is a limited liability company (LLC), answer the following:

A. State or Country of formation: _____

B. Date of formation: _____

C. Registered to do business in Hawaii: Yes/No If Yes, as of: _____

D. Member-managed or manager-managed? _____

E. Provide the following information for each member of the LLC:

(a) Name and Address: _____

(b) Percentage of ownership interest: _____

- (c) If the member is an entity, describe the type of entity, where/when it was formed, and the entity's ownership & management (i.e., principal owners and their respective ownership interests, directors, officers, etc.):
-

F. If the LLC is a manager-managed LLC, provide the following information for the manager:

- (a) Name and Address: _____
- (b) Percentage of ownership interest: _____
- (c) If the manager is an entity, describe the type of entity, where/when it was formed, and the entity's ownership & management (i.e., principal owners and their respective ownership interests, directors, officers, etc.):
-

9. Applicant must submit evidence acceptable to the Chairperson of the Board of Land and Natural Resources (e.g., certified corporate resolutions) that Applicant is duly authorized to apply for and bid on the lease at public auction, and if the successful bidder, to enter into the lease. Applicant shall also identify the person(s) that will be authorized to bid on the lease on behalf of Applicant at the public auction.

10. List all State of Hawaii leases, permits, licenses, easements, sales, etc. to which the Applicant has been a party to, including as a director, officer or shareholder:

| <u>Doc. No.</u> | <u>Type of Agreement</u> | <u>Term of Agreement</u> |
|-----------------|--------------------------|--------------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |

11. Attach tax clearances from both the State of Hawaii and the county which the auctioned land is in (refer to Appendix B).

12. Is the Applicant registered with the U.S. Securities and Exchange Commission (SEC) and been a publicly traded corporation for at least the last three years? Yes/No

If Applicant answered "Yes" to Question 12, Applicant may proceed directly to Questions 18 to 32 and Part VI of this Application and Qualification Questionnaire Form. If Applicant answered "No" to Question 12, Applicant is required to complete all remaining Questions.

Part II: Qualifications and Experience

13. Indicate experience to qualify as a bona fide farmer pursuant to Section 171-14.5, HRS. For husband and wife, at least one individual shall qualify. For partnerships, joint ventures and corporations, "Applicant" in the following questions refers to the entity itself, and, therefore, only 12.A, 12.B, 12.G and 12.J below will apply.

A. Has the Applicant spent not less than two years, full-time, in Yes/No

farming operations? If yes, explain in Question 15.

B. Is the Applicant an owner-operator of an established farm conducting a substantial farming operation? If yes, explain in Question 15. Yes/No

C. Has the Applicant, for a substantial period of the individual's adult life, resided on a farm and depended on farm income for a livelihood? If yes, explain (number of years, location, income, etc): Yes/No

D. Is the Applicant an individual who has been a farm tenant or farm laborer or other individual, who has for the two years last preceding the auction obtained the major portion of their income from farming operations? If yes, explain in Question 15. Yes/No

E. Does the Applicant have a college degree in agriculture? If yes, explain in Question 14. Yes/No

F. Is the Applicant an individual who, by reason of ability, experience, and training as a vocational trainee, is likely to successfully operate a farm? If yes, explain in Question 14. Yes/No

G. Has the Applicant received a commitment for a loan under the Bankhead-Jones Farm Tenant Act for the acquisition of a farm? If yes, attach copy of executed loan document or notification letter. Yes/No

H. Is the Applicant an individual who is displaced from employment in an agricultural production enterprise? If yes, explain in Question 15. Yes/No

I. Is the Applicant a member of the Hawaii Young Farmer Association or a Future Farmer of America graduate with two years of training with farming projects? If yes, attach letter confirming membership and training and explain in Question 14. Yes/No

J. Does the Applicant possess the qualifications under the new farmer program pursuant to section 155-1(3), HRS (refer to section 3.d.(10) of the Instructions to Bidders)? If yes, explain: Yes/No

K. Does the Applicant possess such other qualifications? If yes, briefly describe any other information which you may Yes/No

consider pertinent to assessing your qualifications and experience and which is not contained in your responses to Questions 14 & 15:

14. Education and Training

- A. List all vocational training, business, trade, college or university, graduate or professional schools (for partnerships, joint ventures or corporations, indicate name of principal or manager for which the education applies):

| Name & Location of School (and Name of Person, if applicable) | Field of Study | Degree Type | Date Recvd |
|--|----------------|-------------|------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

- B. Attach evidence of your graduation from college (copy of transcripts or diploma).
- C. Describe any vocational or other training you have received which relates to your qualifications and experience to successfully operate your farm/ranch:

15. In chronological order starting with the Applicant's most current experience, briefly describe Applicant's farming/ranching experience and business experience (management, financial and marketing) as it relates to the land intended to be bid on. For partnerships, joint ventures and corporations, include both experience of business entity itself as well as experience of principals or managers. **Copy and attach additional sheets as needed.**

| | |
|--|---|
| Business Name _____ Address _____ Name & Title of Supervisor _____ Your Position _____ Commodity Produced _____ Size of Operations (no. of employees, acres) _____ Duties & Responsibilities _____ _____ _____ _____ _____ | From: _____ Month Year To: _____ Month Year Full-time () Part-time () Average hours worked per week: _____ |
| Business Name _____ Address _____ Name & Title of Supervisor _____ Your Position _____ Commodity Produced _____ Size of Operations (no. of employees, acres) _____ Duties & Responsibilities _____ _____ _____ _____ _____ | From: _____ Month Year To: _____ Month Year Full-time () Part-time () Average hours worked per week: _____ |
| Business Name _____ Address _____ Name & Title of Supervisor _____ Your Position _____ Commodity Produced _____ Size of Operations (no. of employees, acres) _____ Duties & Responsibilities _____ _____ _____ _____ _____ | From: _____ Month Year To: _____ Month Year Full-time () Part-time () Average hours worked per week: _____ |

16. For any experience listed above which the Applicant would like to be considered in order to qualify as a bona fide farmer pursuant to Section 171-14.5, HRS, under Question 12, attach verification, including but not limited to: 1) pay stubs or W-2 forms where Applicant was employed as an individual or 2) Schedule F of federal income tax returns or General Excise tax returns where Applicant was a self-employed individual or a corporation.

17. Attach at least two (2) reference letters from people, who are not related to you, verifying agricultural background (applies to farm laborer or previous farm experience).

Part III: Business Plan

Complete one Business Plan for each item/parcel which you intend to bid on. (Copy and attach additional plans as needed.)

18. Item No.: _____ Location: _____

19. What will the land be used for? List the goals and objectives to utilize and develop the land:

20. What products will be sold?

21. What is the projected yearly level of production?

22. What is the demand for your products in the near- and long-term?

23. Who are your primary customers and how will the products be distributed?

24. What is your pricing strategy?

25. How will you market your products?

26. Who are your major competitors and what is your competitive strategy?

27. What improvements to the land do you intend to make and at what cost?

28. How will you develop the land from the beginning of the lease until it is in full operation? Give estimated times required by each major activity and projected percentages of development. (Your projection must show at least _____ % development in _____ years and _____ % development in _____ years. (See **Full utilization of the land** in the draft lease.)

[illegible]

29. How will you finance the operations?

30. What problems are anticipated in carrying out this plan and how will you resolve them?

31. Attach a completed Cash Flow Projection. You must show **all** income and expenses applicable to your business for a five-year period or one crop rotation **whichever is greater**. Appendix C provides a **sample** form. You may use your own format.
32. Attach a Preliminary Map Plan (can be drawn free hand). Please note:
 - A. Pasture leases should show fencing, stock watering troughs, water distribution system if needed and topography with physical features to be protected, such as streams, eroded land, steep areas, etc.
 - B. Intensive agriculture leases should show crop rows, roadways, structures, windbreaks if necessary and water distribution system plus topography with physical features such as streams, gullies, steep areas, etc. If you are proposing crops that are not prevalent in the area, letters from agricultural experts testifying to the viability of the crop within the area should be included.

Part IV: Financial Capacity

33. Attach Applicant's financial statements (balance sheet, income/expense statement, and reconciliation of net worth) for the past three (3) fiscal years, and the most current interim financial statement. If Applicant has not been in existence for three (3) years, also attach the financial statements of the principals, i.e., those holding at least a 10% ownership interest.
34. Does Applicant have funding and financing commitments for Applicant's proposed improvements and business operations? If so, provide verification/confirmation(s) from all sources, as follows:
 - a. If Applicant intends to obtain a loan, attach a preliminary loan commitment letter from a recognized lending institution. To be considered, the letter **must** specify approved loan amount and what loan proceeds will be used for.
 - b. If Applicant is unable to or does not intend to secure a loan and Applicant is an individual, husband and wife, sole proprietorship or partnership, attach Personal Financial Statement (Appendix D) for each individual and federal income tax returns for the most recent three (3) years.
 - c. If Applicant is unable to or does not intend to secure a loan and Applicant is a corporation or joint venture, attach corporate financial statements (current balance sheet and income/expense statements) and federal income tax returns for the most recent three (3) years.
 - d. Has the Applicant received a business loan within the last two years from an institution which is a member of the Federal Deposit Insurance Corporation (FDIC) or from any federal mortgage lending agency qualified to do business in Hawaii? Yes/No

If Yes, attach a copy of the loan agreement and any other documentation to evidence the loan and purpose of the loan proceeds.

35. Credit History. The Applicant shall have a satisfactory credit rating or credit history. Submit a Dun and Bradstreet "Comprehensive Report" for the Applicant.

If a Dun and Bradstreet "Comprehensive Report" is not available for the Applicant, this Credit

History requirement shall be satisfied by submitting a credit report for each individual or entity with a 10% or more ownership interest in the applicant as follows:

●Individuals. Credit reports for individual owners shall be from a national credit reporting agency such as Equifax, Experian or TransUnion.

●Entities. Credit reports for entities with a 10% or more ownership interest in the applicant shall comply with the above-stated requirement regarding a Dun and Bradstreet "Comprehensive Report", provided, however, that if such a report is not available for any such entity, then credit reports for each individual with a 10% or more ownership interest in such entity shall be submitted in accordance with the above-stated requirements for individual credit reports.

All credit reports submitted to satisfy this Credit History Requirement shall be dated no earlier than thirty (30) days prior to the date of the Applicant's Application and Qualification Questionnaire. Failure to submit the required credit report(s) may result in disqualification to bid.

For questions 36-42: 1) if applying as an individual, husband and wife, sole proprietorship or partnership, "you" refers to all individuals involved, including all partners, and 2) if applying as a corporation or joint venture, "you" refers to the entity itself and any director, officer or major stockholder or limited liability company member or manager.

36. Are there any outstanding judgments against you? If yes, explain: Yes/No

37. Have you filed bankruptcy within the past seven years? Yes/No

38. Have you had property foreclosed upon or given title or deed in lieu thereof in the last seven years? Yes/No

39. Are you a party in any legal action? If yes, explain: Yes/No

40. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? If yes, provide details, including date, name and address of lender and reasons for the action: Yes/No

41. Are you presently delinquent or in default on any Federal, State or county rent, debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If yes, explain: Yes/No

Part V: Criminal Convictions

42. Have you ever been convicted of the crime of cruelty to animals and/or have you been convicted of a violation of law? If yes, explain: Yes/No

Part VI: Notarized Certification

The undersigned Applicant hereby certifies that the statements and information contained in this Application and Questionnaire, including all attachments, are true and accurate to the best of Applicant's knowledge and understand that if any statements are shown to be false or misrepresented, Applicant may be disqualified from bidding or Applicant's lease may be cancelled.

The undersigned Applicant also authorizes the State of Hawaii Department of Land and Natural Resources and any of its employees or representatives to conduct investigations regarding any of the information provided in this Applicant and contact any of the references named herein.

Applicant Name

Applicant Name

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Subscribed and sworn to before me this

_____ day of _____, 20____.

Notary Public

County of: _____

State of: _____

My commission expires: _____

Revised APPENDIX A
APPLICATION AND QUALIFICATION
QUESTIONNAIRE
(Business, Commercial, Industrial or Resort)

EXHIBIT "**B**"

APPENDIX A

APPLICATION AND QUALIFICATION QUESTIONNAIRE (Business, Commercial, Industrial or Resort)

Write answers in the spaces provided. Attach additional sheets as necessary, clearly indicating the applicable section number.

IMPORTANT NOTE: The Applicant shall be the entity that will execute the Memorandum of Lease (if applicable) and the new lease (if Applicant is the successful bidder at the public auction).

If Applicant is the successful bidder at auction, but the entity that intends to execute the Memorandum of Lease and/or the new lease is different from the Applicant described in this Application (including changes to the ownership of Applicant), DLNR shall, at its sole discretion, have the right to (1) deem these changes to Applicant as an assignment of the rights of Applicant to the new entity requiring the consent of the Board of Land and Natural Resources; or (2) nullify the results of the auction and cancel any rights of Applicant to obtain the lease as the successful bidder.

Alternatively, if Applicant intends to form a new entity to enter the Memorandum of Lease and/or new lease, Applicant may submit this Application and Qualification Questionnaire under the proposed entity by indicating "Yes" in Question 1 below and providing the name of the proposed entity AND submitting information regarding the proposed owners, partners, shareholders, directors, officers, LLC members, etc. DLNR will evaluate Applicant for eligibility to participate in the auction by applying the evaluation criteria to the proposed entity.

Part 1: General Information

1. Applicant's legal name: _____
Applicant's full mailing address: _____

2. Name of contact person: _____
Phone number: _____ Fax: _____
Email: _____
3. Applicant intends to bid on the following parcels:
Item: _____ Location: _____
Intended use: _____
Item: _____ Location: _____
Intended use: _____
Item: _____ Location: _____
Intended use: _____
4. Applicant intends to hold title to the lease as:
Type of owner (check one): || Tenancy (check one, if applicable):

() Individual
() Husband and Wife
() Sole Proprietorship
() Joint Venture
() Partnership
() Corporation
() Limited Liability Company

() Tenant in Severalty
() Joint Tenants
() Tenants in Common
() Tenants by Entirety

5. Applicant's Fiscal Year-End: _____

6. If Applicant is a partnership or joint venture, answer the following:

A. Name, address, & percentage share owned by each partner or joint venture member:

| <u>Name</u> | <u>Address</u> | <u>Share</u> |
|-------------|----------------|--------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

B. Date of Organization: _____

C. General or Limited Partnership (if applicable): _____

D. Recorded: _____
County State

E. Currently registered in Hawaii: Yes/No If Yes, as of: _____

7. If Applicant is a corporation, answer the following:

A. When incorporated: _____

B. In what state or country: _____

C. Authorized to do business in Hawaii: Yes/No If Yes, as of: _____

D. Provide the name, address and shares of stock for each **officer** of the corporation:

President: Name _____
Address _____
Number of stock shares _____ Percentage of shares _____

Vice-President: Name _____
Address _____
Number of stock shares _____ Percentage of shares _____

Secretary: Name _____
Address _____
Number of stock shares _____ Percentage of shares _____

Treasurer: Name _____
Address _____
Number of stock shares _____ Percentage of shares _____

Other: Name: _____ Title: _____
Address _____
Number of stock shares _____ Percentage of shares _____

E. Provide the name, address and shares of stock for each **member** of the corporation's **Board of Directors**:

Name _____
Address _____
Number of stock shares _____ Percentage of shares _____

Name _____
Address _____
Number of stock shares _____ Percentage of shares _____

Name _____
Address _____
Number of stock shares _____ Percentage of shares _____

F. Provide the name, address and shares of stock for each **principal stockholder** which is not named in 6.D. and 6.E. above. (Principal stockholder means one holding 10% or more of the outstanding stock of the corporation.)

Name _____
Address _____
Number of stock shares _____ Percentage of shares _____

Name _____
Address _____
Number of stock shares _____ Percentage of shares _____

Name _____
Address _____
Number of stock shares _____ Percentage of shares _____

Name _____
Address _____
Number of stock shares _____ Percentage of shares _____

8. If Applicant is a limited liability company (LLC), answer the following:

- A. State or Country of formation: _____
B. Date of formation: _____
C. Registered to do business in Hawaii: Yes/No If Yes, as of: _____
D. Member-managed or manager-managed? _____

E. Provide the following information for each member of the LLC:

- (a) Name and Address: _____
- (b) Percentage of ownership interest: _____
- (c) If the member is an entity, describe the type of entity, where/when it was formed, and the entity's ownership & management (i.e., principal owners and their respective ownership interests, directors, officers, etc.):

F. If the LLC is a manager-managed LLC, provide the following information for the manager:

- (a) Name and Address: _____
- (b) Percentage of ownership interest: _____
- (c) If the manager is an entity, describe the type of entity, where/when it was formed, and the entity's ownership & management (i.e., principal owners and their respective ownership interests, directors, officers, etc.):

9. Applicant must submit evidence acceptable to the Chairperson of the Board of Land and Natural Resources (e.g., certified corporate resolutions) that Applicant is duly authorized to apply for and bid on the lease at public auction, and if the successful bidder, to enter into the lease. Applicant shall also identify the person(s) that will be authorized to bid on the lease on behalf of Applicant at the public auction.

10. List all State of Hawaii leases, permits, licenses, easements, sales, etc. to which the Applicant has been a party to, including as a director, officer or shareholder:

| <u>Doc. No.</u> | <u>Type of Agreement</u> | <u>Term of Agreement</u> |
|-----------------|--------------------------|--------------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |

11. Attach tax clearances from both the State of Hawaii and the county which the auctioned land is in (refer to Appendix B).

12. Is the Applicant registered with the U.S. Securities and Exchange Commission (SEC) and been a publicly traded corporation for at least the last three years? Yes/No

If Applicant answered "Yes" to Question 12, Applicant may proceed directly to Questions 16 to 31 and Part VI of this Application and Qualification Questionnaire Form. If Applicant answered "No" to Question 12, Applicant is required to complete all remaining Questions.

Part II: Qualifications and Experience

13. Describe the Applicant's qualifications and experience in owning, constructing, and/or operating the

- a. Describe each business operation (e.g., type of operations, annual gross and net revenues, number of employees, etc.)
- b. Describe Applicant's role with respect to the business (e.g., is/was Applicant the owner, developer, operator, manager, etc.)
- c. Describe the type and size of the improvements/facilities for the business and whether Applicant constructed the improvements or occupied existing improvements. If Applicant constructed or renovated the improvements, describe Applicant's role and provide the construction costs.
- d. Provide the dates of Applicant's involvement/relationship with the business.
- e. If Applicant's involvement or relationship with the business is/was through an affiliated or related company or through a common director or officer, describe the relationship between Applicant and the affiliated/related companies or director/officers.
- f. Describe any affiliations with national or international chains or franchises.
- g. Provide contact information (names, addresses, companies, title/positions, phone numbers) for individuals that DLNR may contact to confirm any of the information provided in response to the above questions.

[illegible]

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15. Has Applicant ever been cited and/or fined for violations of any land use laws, ordinances, rules or regulations? Yes/No If Yes, explain: _____

Part III: Business Plan

Complete one Business Plan for each item/parcel which you intend to bid on. (Copy and attach additional plans as needed.)

16. Item No.: _____ Location: _____

17. What will the land be used for? List the goals and objectives to utilize and develop the land:

18. What products or services will be sold?

19. What is the projected yearly level of production or sales?

20. What is the demand for your products in the near- and long-term?

21. Who are your primary customers and how will the products be distributed?

22. What is your pricing strategy?

23. How will you market your products?

24. Who are your major competitors and what is your competitive strategy?

25. Describe the proposed site development plan for the property, indicating the location and size of buildings, parking areas, landscaped areas, fencing and related uses. Attach sketch of plan.

26. What improvements to the land do you intend to make and at what cost?

27. Describe the proposed development schedule for the various improvements.

28. How will you finance the improvements?

29. Will you be subleasing any portion of the property? If yes, describe the sublease uses:

30. What problems are anticipated in carrying out this plan and how will you resolve them?

31. Attach a completed Cash Flow Projection. You must show **all** income and expenses applicable to your business for a five-year period. Appendix C provides a **sample** form. You may use your own format.

Part IV: Financial Capacity

32. Attach Applicant's financial statements (balance sheet, income/expense statement, and reconciliation of net worth) for the past three (3) fiscal years, and the most current interim financial statement. If Applicant has not been in existence for three (3) years, also attach the financial statements of the principals, i.e., those holding at least a 10% ownership interest.

33. Does Applicant have funding and financing commitments for Applicant's proposed improvements and business operations? If so, provide verification/confirmation(s) from all sources, as follows:

- a. If Applicant intends to obtain a loan, attach a preliminary loan commitment letter from a recognized lending institution. To be considered, the letter **must** specify approved loan amount and what loan proceeds will be used for.
- b. If Applicant is unable to or does not intend to secure a loan and Applicant is an individual, husband and wife, sole proprietorship or partnership, attach Personal Financial Statement (Appendix D) for each individual and federal income tax returns for the most recent three (3) years.
- c. If Applicant is unable to or does not intend to secure a loan and Applicant is a corporation or joint venture, attach corporate financial statements (current balance sheet and income/expense statements) and federal income tax returns for the most recent three (3) years.
- d. Has the Applicant received a business loan within the last two years from an institution which is a member of the Federal Deposit Insurance Corporation (FDIC) or from any federal mortgage lending agency qualified to do business in Hawaii? Yes/No

If Yes, attach a copy of the loan agreement and any other documentation to evidence the loan and purpose of the loan proceeds.

33. Credit History. The Applicant shall have a satisfactory credit rating or credit history. Submit a Dun and Bradstreet "Comprehensive Report" for the Applicant.

If a Dun and Bradstreet "Comprehensive Report" is not available for the Applicant, this Credit History requirement shall be satisfied by submitting a credit report for each individual or entity with a 10% or more ownership interest in the applicant as follows:

●Individuals. Credit reports for individual owners shall be from a national credit reporting agency such as Equifax, Experian or TransUnion.

●Entities. Credit reports for entities with a 10% or more ownership interest in the applicant shall comply with the above-stated requirement regarding a Dun and Bradstreet "Comprehensive Report", provided, however, that if such a report is not available for any such entity, then credit reports for each individual with a 10% or more ownership interest in such entity shall be submitted in accordance with the above-stated requirements for individual credit reports.

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For questions 34-40: 1) if applying as an individual, husband and wife, sole proprietorship or partnership, "you" refers to all individuals involved, including all partners, and 2) if applying as a corporation, joint venture or limited liability company, "you" refers to the entity itself and any director, officer, principal stockholder (stockholders holding > 10% of the outstanding shares) or limited liability company member or manager.

34. Are there any outstanding judgments against you? If yes, explain: Yes/No

35. Have you filed bankruptcy within the past seven years? Yes/No

36. Have you had property foreclosed upon or given title or deed in lieu thereof in the last seven years? Yes/No

37. Are you a party in any legal action? If yes, explain: Yes/No

38. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? If yes, provide details, including date, name and address of lender and reasons for the action: Yes/No

39. Are you presently delinquent or in default on any Federal, State or county rent, debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If yes, explain: Yes/No

Part V: Criminal Convictions

40. Have you ever been convicted of a violation of law? If yes, explain: Yes/No

Part VI: Notarized Certification

The undersigned Applicant hereby certifies that the statements and information contained in this Application and Questionnaire, including all attachments, are true and accurate to the best of Applicant's knowledge and understand that if any statements are shown to be false or misrepresented, Applicant may be disqualified from bidding or Applicant's lease may be cancelled.

The undersigned Applicant also authorizes the State of Hawaii Department of Land and Natural Resources and any of its employees or representatives to conduct investigations regarding any of the information provided in this Applicant and contact any of the references named herein.

Applicant Name

Applicant Name

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Subscribed and sworn to before me this
_____ day of _____, 20____.

Notary Public

County of: _____

State of: _____

My commission expires: _____